

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILMINGTON SAVINGS FUND
SOCIETY, FSB *d/b/a* CHRISTINA
TRUST, *not individually but as trustee*
for PRETIUM MORTGAGE
ACQUISITION TRUST

MEMORANDUM AND ORDER

Case No. 18-CV-4231 (FB) (RER)

Plaintiff,

-against-

RICHARD G. KLEIN, JR.; DONNA M.
KLEIN; and NEW YORK CITY
TRANSIT ADJUDICATION BUREAU

Defendants.

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Appearance:

For the Plaintiff:

STEPHEN J. VARGAS

Gross Polowy LLC

900 Merchants Concourse, Suite 412

Westbury, NY 11590

BLOCK, Senior District Judge:

Magistrate Judge Reyes issued a Report an Recommendation (“R&R”) recommending that a default judgment be entered against defendants Richard G. Klein and Donna M. Klein (collectively, “the Kleins”) in the total amount of

\$387,235.51¹ plus \$39.08 in prejudgment interest, calculated per day from September 23, 2018 through date of judgment. The R&R also recommended the granting of a requested foreclosure and sale and the appointment of a referee to conduct the foreclosure and sale. Finally, the R&R recommended dismissal of the claim against defendant New York City Transit Adjudication Bureau (“NYC TAB”). The R&R advised that objections were due within 14 days of service and warned that “[f]ailure to file timely objections waives the right to appeal the District Court’s Order.” R&R at 7. The R&R was served on all the defendants at their last known address on April 10, 2019, making objections due by April 24, 2019. To date, no objections have been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will, however, excuse the failure to object and conduct *de novo* review if it

¹ This figure accounts for \$308,404.95 for the outstanding principal balance; \$60,378.60 for accrued interest through September 22, 2018; \$17,655.40 for certain insurance and tax disbursements; and \$796.50 in costs. *See* R&R at 7.

appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Clerk shall enter judgment in accordance with the R&R.

SO ORDERED.

/S/ Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
May 3, 2019